IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6463 OF 2002

Shri Dayashanker Dashrat Chaubey)
aged about 49 years, TS Group B,)
working as SDE-1, under General)
Manager Telecom Goa, Dist.Panjim)
Goa and residing at P. O. Fatoda)
Nedgaon, Goa - 203 602.).... Petitioner.

Versus

1) Union of India, through)
   Secretary Department of)
   Telecommunications under the)
   Ministry of Communications,)
   Sanchar Bhavan, 13, Ashoka)
   Road, New Delhi - 1. ..)
2) The Chief Gen. Manager,)
   Telecom (BSNL), Maharashtra)
   Circle, Bombay.)
3) General Manager, Telecom)
   Goa-Panjim, Goa-203 001.).... Respondents.

Mr. V. K. Pradhan for the Petitioner.

Mr. V.S.Masurkar with Mrs.N.V.Masurkar
for Respondent Nos.2 and 3.

CORAM : V.G. PALSHIKAR, and

V.R.KINGAONKAR, JJ.

DATED : 22ND MARCH, 2006.

JUDGMENT (Per : V.R.KINGAONKAR, J.):

The Petitioner seeks to assail the order passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai, in Original Application No. 203 of 2002 dismissing his application for stepping up of pay.

2. The case of the petitioner is that he entered the Department of Telecommunication as Phone Inspector on 16th October, 1976. He appeared for competitive examination for promotion to the cadre of Junior Engineer, which post redesignated as Junior Telecom Officer. In 1983, he was deputed for training, category of graduates and was later on posted as Junior Engineer w.e.f. 24th March, 1987. One Shri S. R. Dussane was junior in rank to him and is from 1984 batch. His appointed was made earlier on 21st May, 1986. There was revision of pay in 1996. In the

revised pay structure, pay of Shri S. R. Dussane was increased.

3. The Petitioner claims that though he made various representations for grant of deeming date of promotion or stepping up of the pay equal to that of his junior i.e. Shri Dussane, yet his requests were turned down. He, therefore, filed Original Application No. 203 of 2002 which has been dismissed by the Tribunal, Mumbai, vide the impugned order.

4. We have heard learned Counsels for the parties. It is contended by the learned Counsel for the Petitioner, Shri Pradhan that the Petitioner is wrongly denied the benefit of stepping up of the pay. The learned Counsel contended that inspite of various requests by the Petitioner, he was not deputed for departmental training and therefore there was delay in posting him as Junior Engineer. It is pointed out that before the pay revision in 1996 the pay of Shri Dussane and the Petitioner was in the same scale. But the pay of Shri Dussane was increased as a result of the pay revision and therefore it is contended that atleast prayer for stepping up of the pay should have been favourably considered. It is submitted by the learned Counsel for the Petitioner that seniority of

the Petitioner is adversely affected without any fault on his part and therefore he is entitled to claim deemed date of promotion and stepping up of the pay.

5. Counter affidavit filed by Shri K. V. Issahak, Assistant General Manager (Legal), reveals that Shri S R. Dussane was promoted as Junior Telecom Officer (J.T.O.) on 21st May, 1986 whereas the Petitioner was promoted on 12th March, 1987 in the said cadre. The Petitioner filed his Original Application before the Central Administrative Tribunal, Mumbai, on 3rd February, 2002. The inordinate delay in claiming retrospective promotion or to say deeming date for promotion is inexplicable. The Tribunal has rightly observed that the Original Application is barred by limitation. The question of stepping up of pay is interrelated and dependent on the question of deemed date of promotion. As stated before, the Petitioner cannot claim retrospective promotion in as much as his Original Application is barred by limitation.

6. Though it is not necessary to go into the details of the facts about the appointment of the Petitioner and Shri S. R. Dussane, which were done prior to their promotion as J.T.O., yet it may be gathered that Shri S. R. Dussane had joined the service about

seven years prior to the Petitioner. So, at the entry point Shri S. R. Dussane was senior in the lower cadre and it appears that rightly or wrongly he was promoted prior to the Petitioner and joined the promotional post as J.T.O. on 21st May, 1986 whereas the Petitioner joined the said post on 12th March, 1987. The relevant Fundamental Rule 22-C allows removal of anomaly by stepping up pay of the senior on promotion drawing less pay than his junior. The stepping up of pay is subject to certain conditions. One of the condition is that the anomaly should be directly a result of the application of Fundamental Rule 22-C. In the present case, the Petitioner cannot be regarded as senior to that of Shri S. R. Dussane, who was promoted on an earlier date. Consequently, the anomaly inbetween the pay scale of the Petitioner and said Shri Dussane is not due to the result of applicability of Fundamental Rule 22-C. It appears that pay fixation was done as a result of revision of pay in 1996 and that is why the pay of Shri Dussane was refixed on 10th June, 1996. The refixation of pay of Shri Dussane is attributable, therefore, to the subsequent revision of pay in 1996. Consequently, the Petitioner cannot claim stepping up of pay by applying any yardstick. The benefit of stepping up of pay cannot be allowed unless the same is governed by the

Rules. The Petitioner has failed to pin-point any specific rule which allows stepping up of his pay as claimed. We are inclined to hold, therefore, that the petition is destitute of substance.

7. In the result, the petition is dismissed. Rule discharged. There shall be no order as to costs.

Sd/-

(V.G.PALSHIKAR, J.)

Sd/-

(V.R.KINGAONKAR, J.)